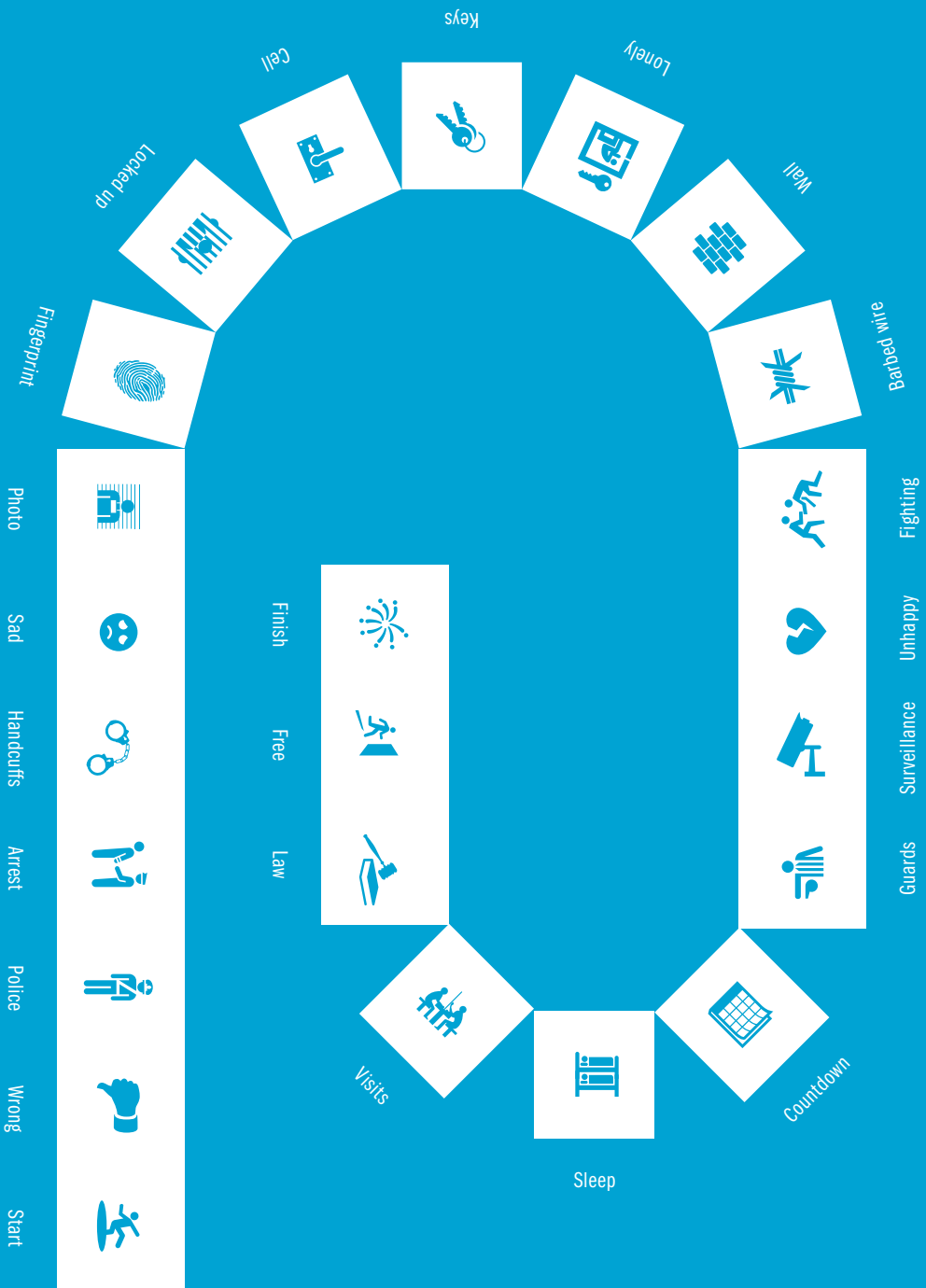




No Child in Detention. A coalition of Amnesty International, Defence for Children, Stichting INLIA, Kerk in Actie, Stichting Kinderpostzegels Nederland, Stichting LOS, UNICEF - the Netherlands and the Dutch Council for Refugees.

“Dad, have we done something wrong?”

Children and parents in immigration detention



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January, 2014

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Introduction

There are children who are afraid of hearing the doorbell ring, who wet their bed even though they had not done that in years, who have nightmares or are afraid to let go of their parent's hand. Dozens of children in the Netherlands are being damaged yearly by a frightening, intense detention experience. They are not being punished, but since they either cannot enter the Netherlands, or are forced to leave it, they are being detained.

In 2012, 70 unaccompanied, migrant minors¹ and 352 children with their family², resided in a Dutch prison. The number of children that, along with their parents, are being placed in Dutch cells, has increased over the past years. In 2010, this concerned 227 children (out of 149 families), in 2011, 324 children (out of 174 families).³ Based on article 6 of the Aliens Act of 2000, these children and their families can be placed in border detention at the Schiphol Application Centre (AC), before it has even been decided whether they are eligible for protection in the Netherlands. Based on article 59 of the Aliens Act, children who are forced to leave the Netherlands can be placed in immigration detention for a maximum of fourteen days.

The No Child in Detention coalition (i.D: Coalitie Geen Kind in de Cel)⁴ sees to it that the debate on border detention and immigration detention proceeds along political lines. However, the voice of the children who are the victim situation is absent in this debate. This publication will give these children a voice, in accordance with article 12 of the United Nations Convention on the Rights of the Child (CRC), which dictates that children should have a voice in 'all actions that concern children'. The stories of children and their parents who, though innocent, reside in a Dutch cell, speak volumes. They reveal how imprisonment affects a child's fundamental sense of safety.

I was afraid of the police. I kept close to my mother. I did not want to play. I was very sad.

Girl, six years old, was placed in border detention for 7 days, directly after her flight from Afghanistan.

These stories also reveal that the harm sustained by children who have been in detention remains visible for a very long time.

I still jump when I see the police. I don't think that this will go away. Black vans scare me as well.

Boy, twelve years old, was placed in immigration detention for ten days, four years ago.

My son started wetting the bed after the detention. He had not done that in five years.

Mother of her seven year old son, was placed in detention for three days, six months ago.

For this publication, eight families have been interviewed. Four were interviewed about their experiences in border detention and the other four about their experiences in immigration detention. These eight families consist of a total of twelve parents and nineteen children. In addition, the lawyers of six different families have filled out an extensive survey at the time these families were in border detention. These surveys were also used for this publication. These six other families consist of a total of eight parents and seven children. The stories of these children and their parents illustrate and stress the concerns for children in immigration detention as mentioned above by the No Child in Detention Coalition.

Children do not belong in immigration detention.⁵ This practice must end and should be prohibited. This is possible. In October 2013, the No Child in Detention coalition put forward the publication “Ik zou verbieden de deur op slot te doen” [I would prohibit locking the door],⁶ which contained an overview of the legal and policy-related arguments, on grounds of which the practice of detaining children for being an immigrant or asylum seeker could be put to an end. Despite the fact that several parties (sometimes cautiously) opposed⁷ the detention of children, the policy was not amended.



The policy of locking up children solely because they cannot (yet) enter the Netherlands is in conflict with the CRC, which reads that children can only be detained as ‘ultimum remedium’. Since there are sufficient alternatives, immigration detention for children is never justified.

This publication is a summary and update of the previously published “I would prohibit locking the door,” enhanced by adding the voice of children and their parents concerning their experiences in immigration detention.

Border detention and Immigration detention

Border detention:

When an immigrant is being detained before he enters the country (article 6 Aliens Act).

Immigration detention:

When an immigrant can no longer stay in the country and is being detained, awaiting deportation (article 59 Aliens Act).



Drawing of a cell in Zestienhoven by a seven year old boy from Iraq. Top middle: the hatch on the left, window on the right. *The window is black because there is nothing to see outside.* The hatch in the door is referred to as the source of feelings of insecurity. On the left the bunk bed.



Summary and Recommendations

Children, especially those without a residence permit are vulnerable. International conventions and guidelines acknowledge this particular vulnerability and demand that governments adjust their policies to conform to this. Both when establishing policies that can affect children and taking individual decisions concerning a child, the interests and needs of children should primarily be taken into consideration. Placing migrant minors in detention is not in the best interest of the child, but despite this, it still occurs. Immigration detention is detrimental, unnecessary and therefore in conflict with the CRC.

Border detention

From the moment that a family with under-age children becomes removable after the rejection of their asylum application, they can only be held in border detention for a maximum of two weeks after the asylum procedure.⁸ The overall duration can accumulate to seven weeks. The State Secretary of Security and Justice holds on to the necessity of border detention to make concessions to the interest of border protection.⁹ However, detention is not a necessity, since families with children or families travelling by land are not being placed in detention in other European countries.

Immigration detention

On December 21st, 2013, the draft bill ‘Wet terugkeer en vreemdelingenbewaring’ [return and immigration detention act], was published.¹⁰ The opportunity this proposal creates to prohibit immigration detention for children should be seized right now. In September 2013¹¹, the State Secretary of Security and Justice announced the emendation of the policies concerning immigration detention in anticipation of extradition of families with children.¹² These families will no longer be placed in detention unless they have previously avoided their supervision. If however, this does occur, requiring a family to be placed in detention -for a maximum period of two weeks-, an individual motivation is required. However, this policy statement cannot be found in the aforementioned proposed act.

Unaccompanied migrant minors

Under certain circumstances, unaccompanied migrant minors can be placed in detention.¹³ The No Child in Detention Coalition believes that when a child is in need of protection and should be placed in a closed facility for security reasons, it is up to the judge of a juvenile court to decide whether this is the case. Immigration detention is never an appropriate way to provide a child with protection. The State Secretary asserts in the letter of September 13th, 2013, that the policy for unaccompanied minors will not be amended.¹⁴

United Nations Convention on the Rights of the Child

The deprivation of a child's freedom on migration policy related grounds is in conflict with the ultimum remedium principle in the CRC. In contrast to criminal detention, the decision whether a child will be placed in immigration detention is a matter of policy. The government must respect the rights and responsibilities of the parents in the guidance of their children. Parents are unable to protect their children in detention, since they have no control over the conditions or duration of the border or immigration detention. The interviews show that it is above all the confinement that makes it impossible for parents to care for their children as they see fit.

Both the 'Justitieel Complex Schiphol' [Schiphol Justice Centre] (JC, which also includes the Schiphol Application Centre), which houses children in border detention and the Rotterdam Detention Centre, where border or immigration sentences are being carried out, are like prisons and therefore unsuitable to accommodate children. Children are scared and feel unsafe in these facilities. Both parents and their children develop psychological issues.¹⁵

The No Child in Detention Coalition believes that the detention of children on grounds of their irregular status is unacceptable and in direct conflict with the CRC.

Primary Recommendation

The primary recommendation of the No Child in Detention coalition is: Constitute a statutory prohibition on border detention (Aliens act article 6) and immigration detention (Alien act article 59) for children.



Additional Recommendations

In anticipation of the observance of the primary recommendation, the No Child in Detention Coalition presents the following additional recommendations for the period in which it remains possible to place children in immigration detention:

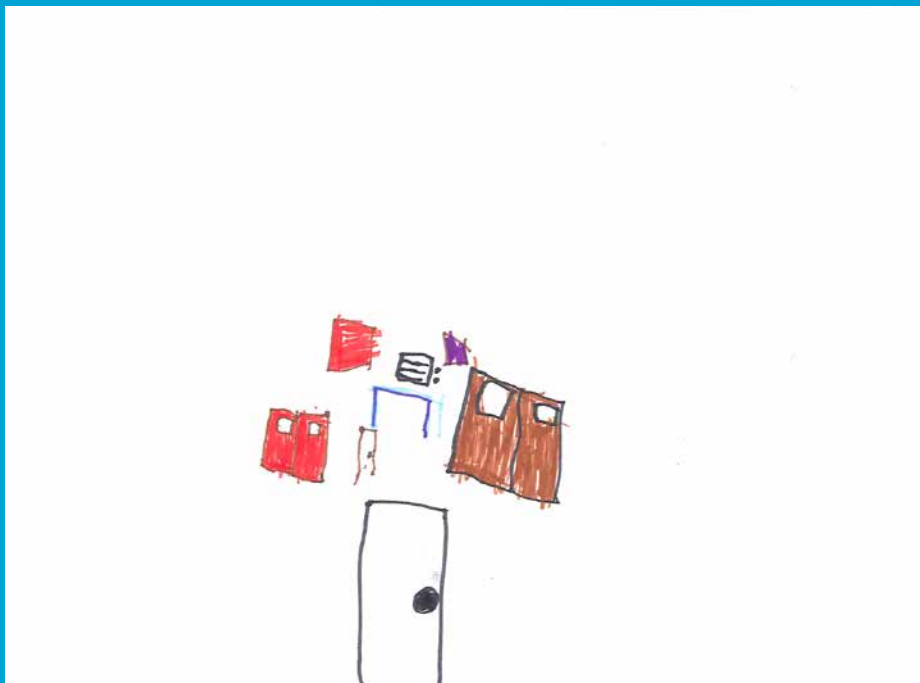
- Apply the ultimatum remedium principle and make use of the alternatives to detention. Equally, for less severe measures, a full investigation into the needs of the child ought to be conducted. The measure with the least impact on the life of children and their families should be selected.
- Respect the role of the parents. Never place families with children in an isolation cell. Parents cannot protect their children in these cells, since control has been taken away from them.
- Preserve unity of the family. Children who came to the Netherlands with their parents should never be separated from them unless it is in the child's best interest.
- Ensure that there are separate accommodations for children, so that their parents can conduct their asylum request without their children present. Provide trained professionals to care for the children while their parents are being interviewed.
- Discard the special rules that allow for unaccompanied migrant minors to be detained for months. Shelter unaccompanied migrant minors either in foster homes or small-scale locations in which counselling for their specific problems can be provided.
- Guarantee that children will not be pulled from their beds by the police or driven off to prison in a police van.

Alternatives

- Alternatives to immigration detention should always be in accordance with the CRC. Respect for a family's life should always come first when choosing an alternative to detention. Children should be able to go to school, be given the opportunity to develop, play, relax and specialised care should be available.
- The regular (open) application centre is the alternative to border detention on Schiphol. People who enter the Netherlands through Schiphol, similar to families who enter the Netherlands by land, should be able to use an open application centre.
- Personal immigration coaching in regular asylum seekers' centres is

the alternative to immigration detention. From here, the child can pursue his development. The asylum seekers' centres should provide children and other family members with personal immigration coaching through a personal counsellor for the child or the family. This counsellor functions as a spider in a web and is in direct contact with all associates involved in the asylum procedure, such as social workers, NGO's, judicial services, authorities and youth protection services. For each child an analysis will be conducted focussing on the issues the child experienced prior to, or during the migration or flight and what the child needs to return in a way that is both dignified and focussed on development. Preparations for the aforementioned return should be personalized.





Afghan boy (six years old) who has been in border detention.
The door is locked.

1. Experiences of children and parents in immigration detention

Locking up children has an enormous effect on them. This becomes clear in the interviews the No Child in Detention Coalition conducted with these children and their parents. In the following chapters the human rights framework (chapter 2) and subsequently the policy-related and legal aspects of immigration detention will be discussed. The quotes of children and their parents regarding border detention (chapter 3) and immigration detention (chapter 4) have been incorporated in these chapters. This chapter will first shed a light on the way children and their parents have experienced detention and secondly, discuss the ‘executive strategies’ these children have with regard to improving the situation of children in immigration detention.

1.1 Experiencing detention

To children, their detention period is a particularly difficult and insecure experience. Even though they feel that the staff is kind, these children are frightened and do not feel safe. Children associate the staff with the police as they wear uniforms and walk around with walkie-talkies. This makes the children anxious.

As I passed through the first door, more appeared. There were so many doors. We were not allowed to leave. All we could do was sit there. I had to think a lot. It was a completely closed off situation. The police had to check everything, even our clothes. They have examined every inch of my body. They examined my mom and sister as well, they were in another room with a female officer. I was checked by a male officer. I had to take off all my clothes, except for my underwear. I did not ask why. I just had to. They searched my entire body. I was devastated. What have I done? This is terrible. All those doors made me very angry. I wanted to destroy them.

Boy of thirteen years old who was placed in border detention for seven days with his mother and younger sister, nine months ago.



I was afraid the whole time. I did not feel safe in that prison because I was scared and locked up.

Armenian girl of fourteen years old who was placed in border detention with her parents and younger sister for twelve days.

The first night I slept in the top bunk bed with my mother. You had to get up via a ladder. I was afraid when I was in alone in bed. The other nights I slept in the lower bed with my mother.

Afghan girl of seven years old who was placed in border detention with her mother and brother for seven days.

Children think that prisons are for criminals. The fact that they experience detention even though they are innocent is therefore very confusing.

I was worrying a lot. I was very scared. I kept thinking, 'we didn't do anything', so I kept saying that to myself.

Boy of seven years old who was in immigration detention for three days, six months ago.

It was unbearable for my daughter. She was petrified. She kept asking me why we were there and even asked me: 'Dad, have we done something wrong?' She was also in physical pain. She kept complaining about her stomach ache, she still does. She was also afraid to sleep alone, so we slept in the same bed.

Iranian father who was in immigration detention with his daughter of six years old, three years ago.

1.2 The hatch

The doors are being locked and the guard can look into the cell through a hatch. The hatch is for both parents and children a cause for restlessness, sleepless nights and sometimes even fear.

The policemen can see you, but you can't see them. You couldn't look through the hatch yourself, it only opened on the outside. When they lock the door, they look through the hatch.

Afghan boy of thirteen years old on border detention.

The fact that they checked whether we were still there in the morning and evening was particularly hurtful. They saw us go inside and locked the door behind us, so what were they expecting?

Syrian father who was in border detention with his son and wife for thirteen days.

I don't think my children took a lot of notice of the hatch, because they were usually sleeping. However, it made me very frightened since I had been in prison in China. Uyghur father who was in border detention with his wife and two kids.

1.3 Parental role

It is very hard, if not impossible for parents to keep guiding their children when they are being detained and do not know what is going to happen. In addition, parents feel that practical issues such as not being able to cook for their children complicates their role in their children's upbringing.

I applied for asylum at the airport. I did not immediately realise that I couldn't leave. I thought that the food we received was unfit for my children and wanted to buy other food for them. I then asked if I could go buy some food and that's when I noticed that I couldn't leave. That's when they told me I was in something similar to a prison. They did not tell me how long I had to stay. I ended up staying there for two weeks.

I was very emotional, I could hardly breathe there. I cried a lot.



*My children were very scared. It was very difficult for them.
They kept wanting to go outside.*

Mother of three children from the Republic of Ivory Coast who was in border detention for two weeks.

A lot of parents who are being placed in immigration detention are unable to reassure or distract their children because they are afraid themselves.

I kept crying. I could not help the children. At some point, my son told me to stop crying, he tried to comfort me.

Iraqi mother who was in immigration detention with her two children for three days.

We were given no choice. We ate rice every day. We had requested something else for our children, but we only got that after seven days. We also did not know where we were. Only after we had spoken to our lawyer did we know that we were dealing with some sort of transition period. We still did not know how long it would take. We wanted different clothes from our luggage and slippers so that we could take a shower, but we were unable to make them understand us. Only after a week we found someone wearing slippers, so we could point at them and tell them we wanted those. Our children's luggage was taken from them as well. My son had two toy cars with him, but he did not get them.

Uyghur mother who was in border detention with her two children and husband.

A striking exception was that of a mother from Kosovo who protected her children as well as she could with an inexhaustible creativity:

We were put in a bare cell with only a small bench when we first arrived in Zestienhoven. I asked my son to take his socks off. I rolled his socks into a ball and told him that we had to throw the ball to each other and whoever did not catch it would lose and the other would win. I wanted to pretend that being there was a game. I tried very hard to keep my children from feeling as if they were in prison. The doors were locked at half past eight. I always thought that sound was terrible for the children. I always made sure that they were in the

showers when that happened. And after that, they would sit in front of the television in their pyjamas so that it seemed obvious for them not go out in the hall anymore. It was very difficult for me to be unable to protect your children from all the horrible stories. Everyone there is very frightened and talks about it a lot. Sometimes they heard parts of other people's stories and asked questions about them, while we were trying to protect them from that.

Mother who was in immigration detention with her two children and their father, four years ago. See drawing on page 19.

1.4 Damage after detention

Locking away innocent children comes at a high price. Regardless of whether the detention period is a few days, two weeks or even longer, it is always detrimental to children. The damage done to a child during detention does not just disappear.

My son started wetting the bed again after detention even though he hadn't done that in five years.

Mother who was in immigration detention with her seven year old son, six months ago.

Her son says that after they were released he suffered from nightmares:

In the beginning I had a lot of nightmares. I dreamt that someone came to kill us.

One of my daughters afterwards felt as if she was a criminal. She couldn't talk about it with her teacher in the family accommodations. She didn't speak to anyone. She did not understand why she had been in prison. My children were always very polite and had a pleasant relationship with the guards. However, the detention period still had a negative influence on them.

Afghan mother who was in immigration detention with her six children for five days.



Ever since detention, my daughter is scared to sleep alone. She sleeps in bed with me. When she is asleep, I put her in her own bed, but if she then wakes up at night, she comes back to my bed.

Iranian father who was in immigration detention with his six year old daughter, three years ago.

1.5 If I were in charge..

The No Child in Detention Coalition asked children what they would change if they were in charge in the detention centres. Opening the doors was the unanimous answer:

First of all, I would set everyone free!

(boy, twelve years old).

If I were in charge, I would build a swimming pool, open all the doors and let everyone play outside.

(boy, six years old).

The doors do not need to be locked, you can just leave the doors to our rooms open. No more locks!

(boy, thirteen years old).

Children should be sheltered in a place where they feel comfortable. I don't think you can do that in a prison.

(boy, fourteen years old).

I would turn it into an ice cream shop. Children love ice cream!

(girl, nine years old).



While her mother tells us that she put her children in the shower to spare them the sound of the doors being locked, her nine year old daughter made this drawing (page 16).



2. Human rights framework

2.1 The right to freedom as a human rights norm

According to article 9 of the Universal Declaration of Human Rights, “no one shall be subjected to arbitrary arrest, detention or exile.” As stated in article 5 of the European Convention on Human Rights (ECHR), everyone has the right to liberty. Under certain circumstances, one can be deprived of his liberty in anticipation of deportation, extradition or denial of access. The deprivation of one’s freedom however, is only justifiable when there are no alternatives. It is an ultimatum remedium or measure of last resort. This corresponds with the international human rights norms which also apply to children.

2.2 The best interests of the child first

Article 3 of the International Convention on the Rights of the Child (CRC) obligates the Netherlands to primarily consider the best interests of children in all actions that concern or affect them. According to article 3 of the CRC, what is in the best interests of a child should be investigated individually in each case.¹⁶ The CRC is a holistic convention. Therefore, article 3 of the CRC ought to be in accordance with the other rights featured in this convention.¹⁷

The essence of each child, including unaccompanied migrant minors and asylum seekers, is the path to adulthood. The right to protection of a child’s development has been recorded in article 6, paragraph 2 of the CRC. The flight from a native country or migration to the Netherlands, often abruptly, disrupts migrant children’s development. Placing a child in detention on grounds of his or her residence status, further disrupts this development.

Residing in a closed environment affects all minors. In a study on violence done to children, the UN states that detaining children is detrimental to both their health and development and can result in irreversible damage.¹⁸

My son often has trouble sleeping. He has often been aggressive since the detention period. He often complains about 'something in his head', but cannot really explain what he means.

Mother about her son of six years old, who was in border detention for thirteen days, a year ago.

Case law from the Administrative Jurisdiction Division of the Council of State (i.D.: Afdeling Bestuursrechtspraak van de Raad van State, ABRvS) puts forward that article 3 of the CRC obligates the magistrate of an administrative law court to verify whether an administration 'sufficiently considered the interests of the child' in any actions that affect children.¹⁹ Case law of the European Court of Human Rights (ECHR) and the Court of Justice of the European Union puts a greater emphasis on the 'interests of the child' compared to national case law.²⁰

The majority of the cases regarding whether a family will be placed in detention, lacks a motivation and consideration of their best interests. This is in conflict with article 3 of the CRC. On the 13th of May, 2013²¹ the ABRvS decided that prior to the arrest of families with underage children, a legitimate assessment, taking into consideration the best interests of the family, needs to be conducted. Disclosure and verifiability are vital in these cases. The dossier therefore needs to contain files that explicitly demonstrate the consideration of interests and a reason why a less stringent measure will not suffice.²²

2.3 Special protection for asylum seeking children

Refugee children seeking asylum in another country have the right to "receive appropriate protection and humanitarian assistance" (article 22 of the CRC). The CRC recognizes asylum seeking children as a vulnerable group with specific rights. The ECHR applies article 2 of the CRC for actions concerning children in immigration detention.²³

2.4 Detention as a measure of last resort

Article 37 of the CRC²⁴ states that the deprivation of a child's freedom should be a measure of last resort and for the shortest appropriate period of time. Depriving children of their freedom on grounds of immigration law is in direct conflict with the ultimum remedium principle.²⁵ In contrast to criminal detention, the decision whether a child will be placed in

immigration detention is a matter of policy. Criminal law dictates that a magistrate decides whether detention is necessary following the conviction of a minor. In an administrative court, the magistrate afterwards verifies whether the detention sentence was lawful.

I saw other prisons on the TV. Those are worse than the one we were in. But we do not belong in a prison. Prisons are for murderers. I haven't said that to anyone, but it was often on my mind. I understand that they want to detain you, because they think you might run away. So for them it is good, but it wasn't good for me. I kept thinking: 'we haven't done anything'. So I kept telling myself that.

Seven year old boy, was in immigration detention for three days, six months ago.

Article 3 and 37 of the CRC demand that the best interest of the child should be taken into primary consideration prior to detention and that lighter measures be explored first.

2.5 Responsibility of parents

On grounds of article 5 of the CRC, the government ought to respect the responsibilities of the parents with regard to the appropriate direction and guidance of the child. By placing children in detention along with their parents, the Dutch government takes away the responsibilities these parents have to their children.

When a family is placed in detention, they are sometimes given the choice to accommodate their children elsewhere. The Dutch government therefore believes that the parents are responsible for choosing to keep their children with them during detention. The No Child in Detention Coalition believes that it is unacceptable to have parents decide to either keep their children with them in detention or have them live -in freedom- with an unfamiliar family. The period of detention is a very difficult time for all family members involved and is also a time when parents and their children need each other most. Moreover, Parents are also scared to be extradited without their children.²⁶

A father who was interviewed for this publication, was first placed in immigration detention by himself for three months. Later his wife and two children were also taken into custody. These three months in which this father was in detention by himself have had a detrimental impact on him:

I mainly notice that my daughter suffers heavily from anxiety. Even more since my three months of detention. She always wants to know where I'm going and when I'll be coming home. If I'm home later than expected, she calls or texts me to come home because something bad is happening. It has been this way for almost four years. I have tried almost everything. In the beginning I tried to comfort her a lot, but I also tried taking a little more distance, hoping that she would attempt to be her own person again. Nothing works though, she keeps an eye on me at all times.

A father about his nine year old daughter.



I was searching for security and freedom and ended up in an insecure and confined situation

For 21 years, I have fought for the rights of women and girls in Afghanistan, teaching human rights, even under the Taliban regime. It was dangerous of course. Also, I worked as a gynaecologist and have delivered over a hundred children. I was three months pregnant when I ended up in the Schiphol prison with my thirteen year old son and seven year old daughter. I was forced to leave my husband and three children in Afghanistan. The travel agent was only capable of arranging a flight for three at a time. I was searching for security and freedom and ended up in an insecure and confined situation in the Netherlands. I was not aware that we were going there, I was only promised that I was going somewhere safe. I was afraid of the policemen inside the prison, we saw fifteen or even twenty of them. My daughter was also very frightened. She kept crying. She said she was afraid that the policemen were going to hit us.

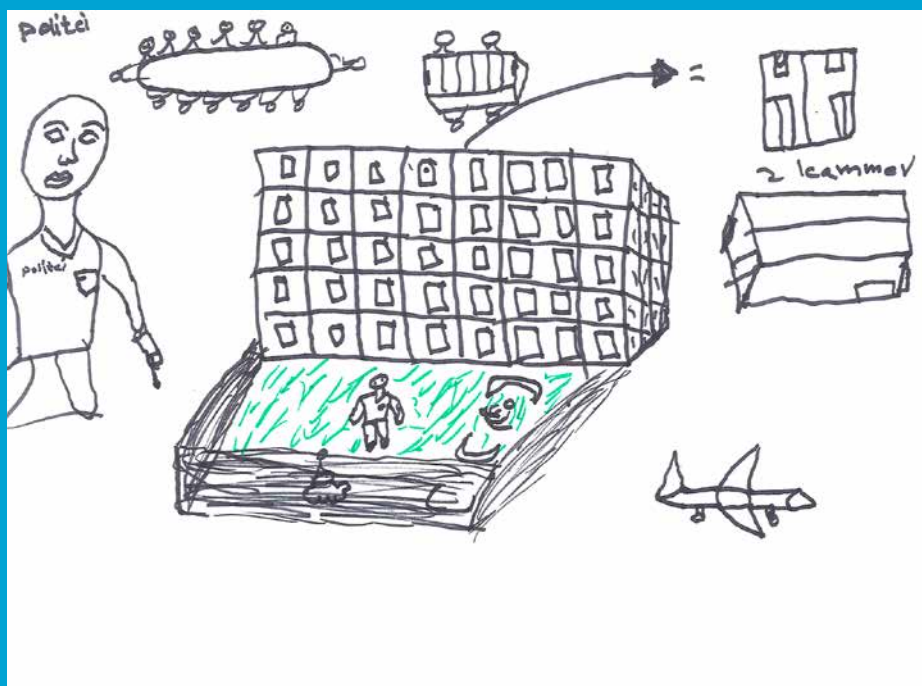
Everything that had happened in Afghanistan and the terrible parting from my children had made me very nervous, but mostly I was concerned about my baby. The first day on Schiphol, I immediately asked for a gynaecologist, which was not available there. The seventh night, everything went wrong. I was bleeding severely and had terrible back pains. I knew something was wrong with the baby. After all, I was still a gynaecologist. I think I must have had to call for a doctor for nearly five hours. When the doctor arrived, it was too late. They determined that the baby had died. I am convinced that my baby died because of the immense amount of stress.

I kept thinking: 'what have I done to the children? This is horrible. Will they ever forget this?' I was unable to comfort the children. I was too scared and too nervous. I also kept thinking about my baby. I felt alone. I told my children that I thought we would be released soon, while I didn't even know whether that was true.

We slept very poorly, not only because of the stress but mainly because of the hatch in the door, through which the policemen could always see us. We were afraid they would come in.

The prison on Schiphol is good for nothing and no one. It is even more awful for women and children. I can never forget this. I keep being reminded of this. I used to be a strong woman in Afghanistan, but now I am always crying and completely dependent on others.

Afghan mother who was in border detention with her two children of thirteen and seven for seven days, nine months ago. On the eighth day, after her miscarriage, she was taken to an asylum seekers' centre



Thirteen year old Afghan son of the woman from the interview:
This is the prison. We were staying where the dot is. On the right you can see the layout of the cell. On the left you can see the police.

3. Children in border detention

3.1 Border detention policy

From the moment that a family with under-age children becomes removable after the rejection of their asylum application, they can only be detained in border detention for a maximum of two weeks after the asylum procedure.²⁷

The government believes border detention to be necessary to protect the borders. However, not a single family in border detention in 2013 has been extradited to another country according to lawyers and social workers who are stationed at the Schiphol Application Centre. They were released and granted access to the Netherlands regardless of whether they received a residence permit.

Families that enter the Netherlands by land are always free to await their asylum application in freedom in the regular accommodations. It is striking that the way in which a family enters the Netherlands determines whether children will end up in detention. The No Child in Detention Coalition believes that this is in conflict with the non-discrimination principle as is established in article 2 of the CRC.

I understand that the IND is just doing their job. It is necessary to protect the borders, but they knew who we were. We had passports and even a family record which proved proves that we are a family, so why would you detain us? And why for thirteen days? Do these procedures have to be this long? You can't really improve on anything in a prison, not even for children. That's because it is a prison, and that is the problem. It should be abolished and people should be accommodated in the same way as people who enter the Netherlands by land. A child that travels by land is a child. A child that travels by plane, is also a child.

A Syrian father who was in border detention for thirteen days with his wife and six year old son.

The government clings to the necessity of border detention because 'the borders need to be protected'.²⁸ It is supposed to be the duty of the Netherlands to protect the outer borders.²⁹ According to the Schengen

borders code, the Netherlands must see to it that migrants who are not in the possession of the required documents do not enter the Schengen area.

However, article 13 of that same code puts forward that the application of both special provisions regarding the right of asylum and international protection -and therefore also the ultimatum remedium principle- are always a priority. In addition, the Asylum Procedures Directive state that the member states, amongst which the Netherlands, cannot detain anyone on the sole grounds of being an asylum seeker.³⁰ The Court of Justice determined that detention can only be enforced when the behaviour of an asylum seeker gives cause for this, but not as a standard procedure.³¹ The ABRvS ³² adjudicates that border detention (article 6 Aliens act) is viable as standard procedure after all, since it is not an entry ban –which is impossible to enforce when it concerns asylum seekers, since they are protected by article 8 of the Alien act- but a refusal of *further* access.³³ The Netherlands apply article 13 paragraph 1 jo article 5 paragraph 4 subsection c of the Schengen border code, granting people access to the area on humanitarian and international obligation grounds. This defeats the argument that border detention is necessary to meet the Schengen obligations.

The No Child in Detention Coalition believes that the ABRvS's extension of the contents of article 6 of the Alien act is in conflict with article 15 of the constitution, which reads that deprivation of liberty always requires legal grounds. Since article 6 of the Alien act refers to 'entry ban' rather than 'refusal of further access', there are no legal grounds for border detention.

In 2010, a change in policy took place, abolishing border detention for *unaccompanied* migrant minors. This policy change was initiated by both a statement of the Amsterdam Court of Justice and an inspection concluding that the Schiphol Application Centre was too much like a penitentiary and therefore unfit to accommodate unaccompanied children.³⁴

Unfortunately, the ABRvS maintains however, that children can still be detained in border detention when accompanied by their family.³⁵ On the 22nd of August, 2013, a three judge panel of the Amsterdam Court visited the Schiphol Application Centre for an inspection. The inspection concerned an Afghan family consisting of two parents and their three



children of eight, ten and eleven years old, who were denied (further) access to the Netherlands. They were in border detention for twelve days at the Schiphol JC.

The judges determined that even though the accommodation of families with children had been taken into account in the design of the building, the conditions at the Schiphol JC had ‘an unmistakable penitential character.’³⁶ Nevertheless, these judges ordained that these conditions were not sufficient motivation to render a two week stay for family with children inappropriate and could therefore not be dismissed in advance. In reaching this decision, the judges took into account that there are play – and recreation areas for children and that the families can withdraw to their cells to avoid other adults.³⁷

The No Child in Detention Coalition is disappointed by this verdict because:

1. It appears that the judges did not sufficiently explore the way in which children and their parents experience detention. By focussing primarily on the material aspects such as the amount of square metres, windows and table-tennis sets, the judges failed to recognize the crucial argument against border detention: the fact that it is a terrible and at times even traumatizing experience for children and their families to be locked in a cell directly after their flight. This argument was not a significant part of their evaluation.
2. The judges considered the ability to ‘withdraw to your cell’ beneficial, whereas this intensifies the feeling of ‘captivity’ for parents and their children, even when the door is unlocked during the day time. Moreover, the hatch in the door leads to feelings of apprehension.
3. The judges determined that the guards can watch the children when their parents are being interviewed by the IND [Immigration and Naturalisation Service]. This is not in correspondence with what the guards told social workers, lawyers and interpreters. They declare that the guards told them it was not their job to watch the children.

No influx after abolishment border detention

The State Secretary of Security and Justice states that the events in Belgium demonstrate that the abolishment of border detention has led to ‘an enormous influx of people to Zaventem’ and that a great number of people have disappeared from the open centers.³⁸ This is not in

correspondence with the figures of the Belgian immigration services. In contrast, since border detention has been abolished in 2009, the number of people applying for asylum at the airport in Belgium has decreased since 2011. The number of families that arrived in Belgium by plane and applied for asylum has decreased from 127 in 2011 to 120 in 2012. Therefore, in this case there is no enormous influx.³⁹ The fact that a great number of asylum seekers with an unknown destination disappear, is perhaps caused by an enormous capacity issue in the asylum seekers' centres.⁴⁰

The No Child in Detention Coalition calls attention to the previous experiences with abolishment of border detention for unaccompanied migrant minors in the Netherlands. In 2001, 3.654 unaccompanied minors applied for asylum in the Netherlands. In 2011, border detention for this particular group was abolished. In the 2012, the number of unaccompanied minors that applied for asylum reached an all-time low: 407. In the first half of 2013, 218 applications were submitted.⁴¹ Ever since the abolishment of border detention, the number of asylum applications of unaccompanied migrant minors has only decreased. Moreover, the argument concerning border detention as a necessity for the protection of the borders did not raise an issue.

3.2 Location: the Schiphol AC is a prison

Since the 1st of January, 2013, there is a new Application Centre (later: AC) The AC is located within the Schiphol Justice Complex (JC). In this building, different sections house asylum seekers, migrants awaiting extradition and people who have been apprehended at the border on suspicion of committing a crime.

Families sleep in a cell and live behind high walls. The AC is a tall, bleak structure. Guards are posted on every corner and the cells are situated deep within the walls. Children therefore feel as if they are inside a prison. At 21:00, everyone is locked in their cells until the next morning.

In the interviews it becomes apparent that there appear to be virtually no recreational utilities for older children available at the Schiphol JC. Moreover, most kids feel too anxious to be playing freely. By locking up children, their right to be a child and to play is taken away from them.

They only had toys for little children, there was nothing for us.

Armenian girl of thirteen years old who was in border detention for ten days with her older sister and parents.

There was a hall where we could sit. It was closed. You could sit there every day. All day long. We didn't really play.

Boy of thirteen years old on recreation in border detention.

His seven year old sister elaborates:

I wanted to play outside; I didn't feel like playing in there. I wanted to play freely outside. I didn't want to play inside. I was very sad in there.

Every day was the same for them. At first we did not know we could go to the courtyard. When my husband learned that, he took out children there several times. My children were scared to do anything without us there. Every day was exactly the same for them. They kept asking 'why are we here?', 'when can we go outside to play?'

Uyghur mother who was in border detention for ten days with her husband and two children of twelve and four.

3.3 Children attending interviews

There have been various reports regarding the presence of children during the interviews with the INS. Some children attend the interviews, while other children remain in their cells. In the verdict of the Amsterdam Court of Justice concerning the inspection of the Schiphol AC it is noted that security staff can watch the children during their parents' asylum interview. In practice, this does not appear to be the case and is antithetical to the information the Coalition received during their visit to the AC.

My son came with me to the interviews. It was difficult to explain to him what they were. We were lucky that they accidentally brought in a Russian interpreter. I do speak Russian but my son doesn't, so we could keep everything from him. I was really lucky, but other Syrians will probably not be. They will probably get an Arabian interpreter so

that the children can hear everything.

Armenian-Syrian mother and her six year old son in border detention.

My children were present at the interviews with the Immigration Service, The Dutch Council for Refugees and my lawyer. That made it hard to concentrate. Sometimes I didn't answer a question at all. It was very difficult.

Mother of three from the Republic of Ivory Coast on border detention.

3.4 Assessment of children's rights in border detention

Placing children in border detention solely because they are applying for asylum with their parents and entered the Netherlands by plane instead of by land is in conflict with article 2 of the CRC. There is no impartial justification for this differential treatment.

When parents together with their children enter the Netherlands at Schiphol airport, the government places them in border detention without taking their individual needs into consideration. Asylum seekers entering the Netherlands cannot automatically be detained according to European and UNHCR guidelines.⁴² The ABRvS states that the procedural maximum two weeks of detention after rejection of the asylum application shows that the interests of children have indeed been taken into consideration.⁴³ This notion is in conflict with article 3 of the CRC which states that all actions that concern children, require an assessment of their needs. Furthermore, border detention as a standard procedure is in conflict with article 37 of the CRC.⁴⁴

The Schiphol AC has the characteristics of a prison and is unfit to accommodate children.⁴⁵ It is alarming that parents are unable to protect their children against the anxieties of border detention during their development (in conflict with article 5 of the CRC: States Parties shall respect the responsibilities, rights and duties of parents). Parents are powerless during detention and cannot provide certainty as to how long they will stay there. Responsibilities are taken away from parents since it is not them but someone else who decides for them when they are, along with their children, to remain in their cells. Parents in detention declare



that they are not only unable to protect their children, but also unable to perform their regular parental duties. For instance, they cannot provide food when their child is hungry at night. These parents feel intimidated and develop psychological issues in detention.

In several statements, the ABRvS maintains that parents actually are able to protect their children and therefore approves of placing families in border detention. This is quite different to how the parents who have been interviewed by the No Child in Detention Coalition feel. They feel that they are unable to protect their children as a result of their own anxiety. To a child, a parent's fear is very harmful. By placing families in border detention, the government deprives parents of their natural protective role, which is in conflict with article 5 of the CRC.

The verdict of the Amsterdam Court following the inspection of the Schiphol AC states that parents can withdraw to their cells to avoid detainees, even though it is the feelings of captivity that are being experienced as particularly arduous. There is also very little privacy for families in detention due to the constant awareness of the hatch, through which they can be spied upon unannounced at all times.

The No Child in Detention Coalition believes that the presence of children during asylum interviews of their parents is unacceptable. There are no appropriate facilities to accommodate children during these interviews. It is doubtful whether parents are able to truthfully discuss possible trauma's and sustained harm with their children present. These painful issues can have a detrimental effect on the development of children and the relationship with their parents. If parents would deliberately withhold their most unpleasant experiences to protect their children, this could lead to a wrongful rejection of their asylum application.

Previous experiences have shown that families move on to asylum seekers' centres after border detention to go through the extended asylum procedure. For most cases, the period of detention is no longer than two weeks. However, the detrimental effect it can have on the development of children can be permanent.

I knew it right away: This is a prison. This is very, very bad.

A lot of people came to our room in the asylum seekers' centre. Three or four policemen, two from the COA, and two from the front desk. My mother told us to hurry up and brush our teeth. My mother started packing all our important things, including my sister's cuddly toy.

When the van arrived, I immediately saw the huge doors. They opened very slowly. I knew it right away: this is a prison. This is very, very bad. The policemen searched our possessions and frisked us. They also had to inspect my sister's cuddly toy, but when my mom said that that wasn't necessary, they didn't. We had to wait for a long time in a very stark room. There was only a bench to sit on.

There was always a guard in the corner of the room that we played in. You were allowed to do almost nothing. We couldn't play with a firm ball, but only with a foam ball because we might break something. We were taken outside once, just twenty metres outside the prison. There was an old plane there. They hoped that we would like it but I didn't. I was afraid we had to go into a plane as well.

The policemen did organise a water balloon match, which was a lot of fun.

We only stayed for ten days, but it felt more like six weeks. My little sister was very afraid, I remember that well.

You are locked in your cell a lot. From 20.30 in the evening until 8:30 in the morning, and also during dinner we were not allowed in the courtyard.

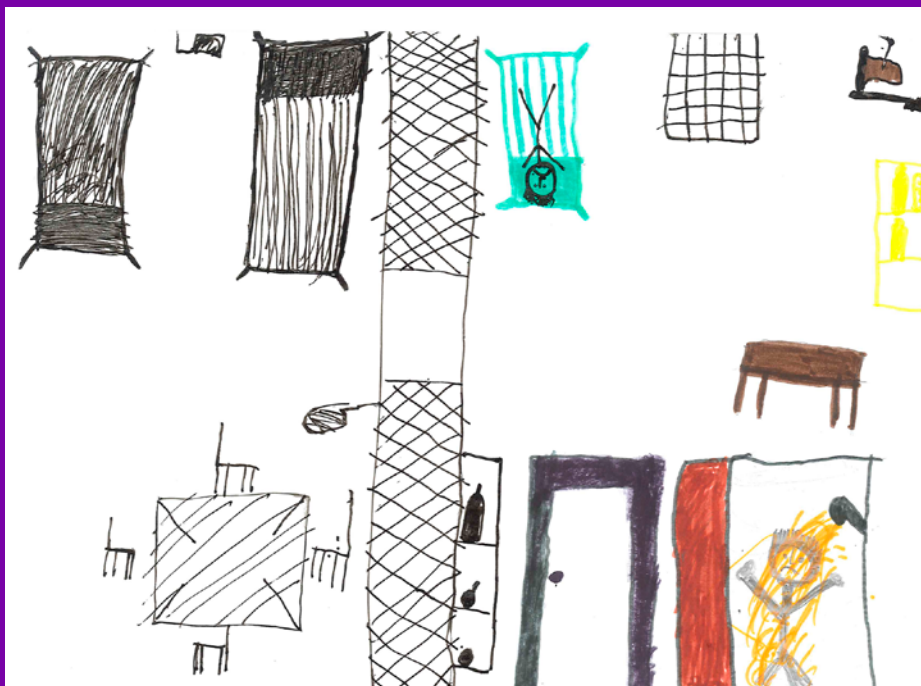
I had always thought that prisons were for criminals. But why was I in one then? There were just refugees, no criminals. We were very scared that they would put us on a plane back to my mother's country.



I often heard people crying. Both children and adults. I think everyone there was afraid to be sent away.

You may think that you are safe within those huge walls, but you are not because you are frightened the whole time. After we got out, me and my sister played 'prison' a lot. We would lock each other up and say 'you can never ever come out'.

Twelve year old boy who was in immigration detention four years ago for ten days with his parents and his six year old sister, made this drawing of the cell he was in.



4. Children in immigration detention

4.1 Immigration detention policy

On the 13th of September, 2013, the State Secretary of Security and Justice announced that he will be paying special attention to vulnerable groups in the immigration detention policy (article 59 of the Aliens act). Families with children in anticipation of their extradition will no longer be placed in detention, unless they have previously avoided their supervision.⁴⁶ If however, this does occur requiring a family to be placed in detention -for a maximum of two weeks-, an individual motivation is required.⁴⁷ The No Child in Detention Coalition looks forward to this policy amendment with anticipation, but also wonders why this amendment has not been embedded in the 'return and immigration detention act' published for consultation on the 21st of December, 2013.⁴⁸ Moreover, the most recent amendment in the migration circular, in which a lot of matters regarding immigration detention have been altered, contains not a single reference to the promise of the State Secretary to abolish immigration detention for families.⁴⁹

The No Child in Detention Coalition is concerned with the dependability of this resolution, since the policy to cease placing families with children in immigration detention has not yet been integrated in tangible regulations. The Coalition recognises the 'return and immigration detention act' as an opportunity to legally prohibit immigration detention for minors.

The Coalition also expresses concern about the children who may still end up in a cell, because their parents have previously avoided their supervision. Two weeks of detention is detrimental to a child's right to an unhindered development. Furthermore, the *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (CPT) established that the maximum detention period of two weeks is often being violated. The Committee calls for the government to, where possible, prevent detention for families with children.⁵⁰

The current immigration detention regulations are based on the *Penitenteire Beginselenwet* [Penitential Principle act] (a penal law). Disciplinary measures such as isolation, body searches, visitation,

handcuffing etc.) can therefore also be applied to children in immigration detention. The draft bill ‘return and immigration detention act’, announces that immigration detention will be incorporated in administrative law in the future.⁵¹

In accordance with the new policy, when a family is placed in detention -for a maximum period of two weeks-, an individual motivation is required and the detention requirements must be met.⁵² The No Child in Detention Coalition is positive that the State Secretary will acknowledge that an individual motivation and consideration of interests ought to take place.

In a dialogue with the No Child in Detention Coalition, The State Secretary mentioned that ever since families are no longer being placed in detention, families tend to disappear after being informed of their extradition. In practice, being informed of extradition indeed triggers a lot of emotions. The Coalition therefore pleads for providing constant support for families from the moment they are informed of their extradition.

If the policy to only place families who have previously avoided supervision in immigration detention after an individual assessment of their needs is implemented, this will mean progress. However, warranting the rights of the child does not suffice. The interviews with children and parents who have been in immigration detention illustrate exactly how detrimental detention is. Moreover, these interviews show that for these families, immigration detention did not lead to extradition. In addition, these interviews demonstrate that even a short period of detention damages children. This is sufficient cause for the No Child in Detention Coalition to continue advocating the abolishment of immigration detention for children.

4.2 The arrest of families with children

In previous years, children experienced the manner of their arrest in advance of immigration detention as extremely traumatising. The children in the family accommodations are afraid of passing vans. They were often pulled from their beds early in the morning and received very little time to pack their belongings.

A father states that seven months after their detention, his seven year

old son still jumps when he hears the doorbell ring unexpectedly: He is very startled whenever the doorbell rings. Yesterday, someone from the church rang our bell relatively late in the evening. He told me not to open the door. He also suffered from nightmares.

Father of a boy who was in immigration detention for three days, six months ago.

The boy remembers the day the police were at their doorstep well:

I immediately heard that they were policemen. They had been here a couple of times before. I was already awake. It was the month of my birthday. Fortunately, it had already been my birthday. It was the 30th of July. That's when they came for us.

Seven year old boy.

The transport to the prison in the van was also very overwhelming for children.

The car with tinted windows was scary. You could look out the window, but no one could see you. It was hard to communicate with the driver, there was a separation screen between us. There was a hole through which you could talk to him. My brother had to throw up so through the hole, I asked him to pull over. It was troublesome, but eventually he pulled over.

Fourteen year old girl who was in immigration detention with her mother and five brothers and sisters for five days.

4.3 Location: Detention Centre Rotterdam is a prison.

Detention Centre Rotterdam holds 320 cells which can accommodate 600 people. The detention centre borders the Zestienhoven airport in Rotterdam and also has family accommodations. The side face of the building only shows dark walls with barbed wire. Visitors must pass through a metal detector after their passports have been checked. The family accommodations consist of two floors. The upper floor houses married couples without children and the lower floor houses the families with children. Cells for families with children can be joined through a connecting door. When there are more than two children in a family, the parents usually sleep separately with a few of their children each.



Apart from the common room, the family accommodations have a separate play room for children. It is a space with tables, chairs, computers and games. Further, there is a courtyard with a playground equipment which can be accessed from the family accommodations. Families are confined to their cells during dinner (16.45-18.00), lunch (12.00-13.00) and nights (21.00-08.00). The draft bill 'return and immigration detention act', states that according to policy, the migrants cannot be confined to their cells for more than twelve hours daily. Cells should therefore not be locked before 22.00.⁵³

The building has in all aspects the appearance and characteristics of a prison.

The children who were interviewed by the No Child in Detention Coalition were not happy with the accommodations. They did not like that you were not allowed to bring your own possessions and that you could only do some tinkering.

About three times a day you were allowed outside your room. You could play in a room which had no toys for children like me, just difficult puzzles and other things for adults. We couldn't really play outside. You couldn't see the sky very well. There was a high wall with wires on it. If you climbed into those wires, you would die. In our room I had one book and one pen. You couldn't take anything from the play room to your own room. So if we were locked up we could only watch TV. I didn't really feel like doing anything because I had to think a lot. I tinkered a little twice. One time together with a man and one time with a woman. I made a heart and flowers for my mom and a green tree for my dad. The man and woman were very nice, they wore blue trousers and white shirts. They were some kind of guards. I told the policemen that I wanted to do sports. I love playing football. But the policemen told me that that was only for children of fourteen years and up. That is stupid. Children can do sports really well.

Seven year old boy, was in immigration detention for three days, six months ago.

We had a teacher, but not a real school. It was more like tinkering. They also gave us chocolate milk. There was a playground with a wall

around it. There was a courtyard surrounded by a fence and a wall. You couldn't see anything except the prison site. If you wanted to go outside, a guard had to come with you, so you had to ask them if they wanted to come with you. The guards played with us, but sometimes they didn't feel like it. There was also a play room where we could tinker with a woman and listen to music.

Fourteen year old girl, who was in immigration detention with her Afghan mother and five brothers and sister for five days.

4.4 Assessment of children's rights in immigration detention

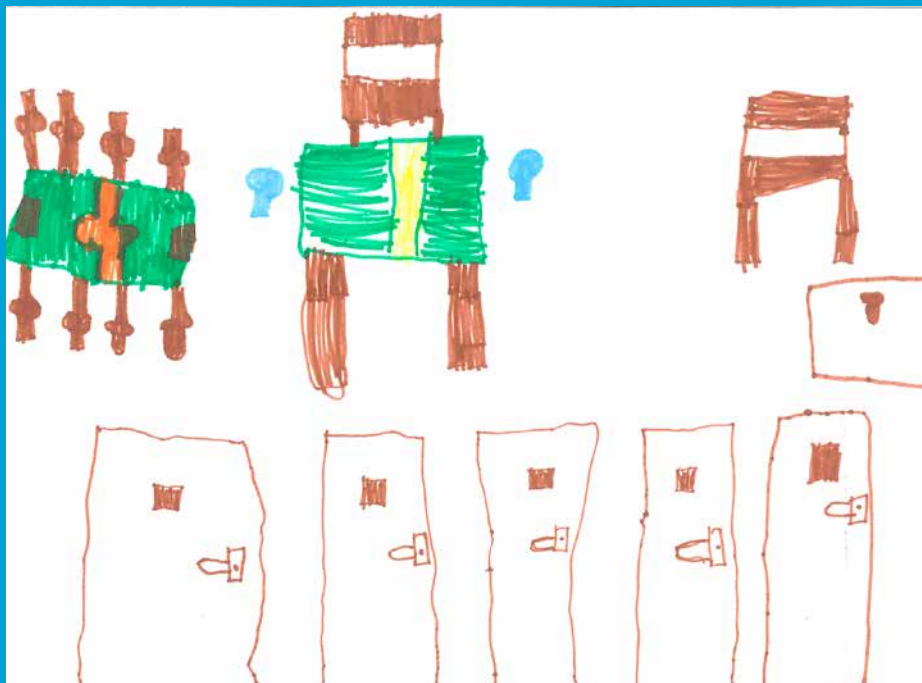
In several Dutch court cases regarding children in immigration detention, an appeal to article 37 of the CRC was successful. On the 23rd of May, 2012, The ABRvS determined that, in accordance with article 37 paragraph b of the CRC and the policy implemented by the minister, considering the importance of the personal needs and interests of minors, it was not conceivable why immigration detention would be a necessary action. In this notion, the AJD took into consideration the fact that the family retained a cooperative attitude during the return process.⁵⁴

Even a detention period of two weeks can be harmful to the development of a child. The European Court of Human rights ruled against the French government in a case regarding a family with two children from Kazakhstan. The court ruled that the fifteen days of immigration detention for this family was in the case of the children a breach of article 3⁵⁵ and 5⁵⁶ of the ECHR and for the family an infraction on both their private –and domestic life (article 8 of the ECHR⁵⁷).⁵⁸

Despite the State Secretary's amendment on immigration detention policy for families, children will continue to be placed in detention when their parents have previously avoided supervision. However, article 2 of the CRC states that children cannot be punished for their parents' actions. Until June 27, 2010⁵⁹, families whose asylum application had been rejected were forced to leave the asylum seekers' centres. Before that date, it was impossible for these families to be visible. The No Child in Detention Coalition therefore assumes that such 'avoidance of supervision' will not be disputed. Moreover, it is debatable whether the avoidance of supervision in the past will automatically lead to similar behaviour in the future.



After all, once the children and their parents have been identified by the government and receive shelter and guidance, they tend to observe supervision regulations. The Coalition therefore does not see why detention in anticipation of extradition or deportation to the native country is necessary. The detention of children in anticipation of extradition is in conflict with article 3 and 37 of the CRC and article 5 of the ECHR.



A drawing of the common room in Detention Centre Rotterdam by a seven year old Afghan boy. On the left we see the foosball table and in the middle the table tennis set. On the bottom we can see a long row of doors with a lock and a hatch.

5. Unaccompanied migrant minors still detained for months

Unaccompanied migrant minors are children who came to the Netherlands without their parents. Article 20 of the CRC⁶⁰ states these vulnerable children have a right to special protection.

The No Child in Detention Coalition was very happy with the letter of the retired minister Leers of Immigration, Integration and Asylum, in which he announced that he would confine detention for unaccompanied migrant minors.⁶¹

In 2012 however, it appears that between 50⁶² and 70⁶³ migrant minors have still been placed in detention. Until December 1st, 2013, 24 children were placed in detention.⁶⁴ These children are placed in a special ward of a Juvenile Youth Institutions (i.D: Justiële Jeugdinrichting) These children can be transferred to a detention centre a few days in advance of their extradition. Furthermore, in 2012, 20 children were directly transferred to Detention Centre Rotterdam prior to their extradition.⁶⁵

The current criteria for detention of unaccompanied migrant minors were determined in a letter by the former Minister on the 10th of March, 2011.⁶⁶ He maintained that migrant minors should more often receive the benefit of the doubt when considering whether it is more important for the migrant to retain his freedom or for the government to ensure the migrant's availability through detention. Unaccompanied migrant minors can only be placed in immigration detention when the government feels it is necessary to ensure the availability of the minor. The necessity of availability is being used as a counter-argument to justify detention. The No Child in Detention Coalition therefore pleads to repeal these counter-arguments on grounds of which unaccompanied minors can be still placed in detention for months on end.⁶⁷

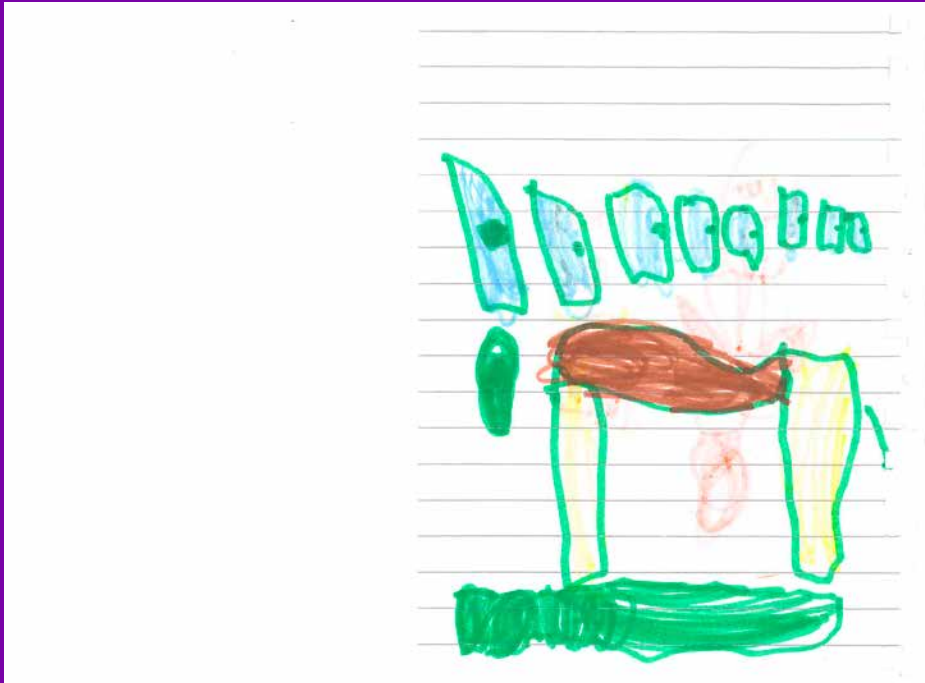
The fact that these minors have previously left without a known destination does not justify long periods of detention. It is up to the judge of a juvenile court to determine whether these minors are in need of protection,

or should be placed in detention for safety reasons.

Children who have previously been convicted of a crime and served their sentence, do not deserve to be punished for a second time in immigration detention.

On the 13th of September, 2013, The State Secretary announces in his letter that the policy regarding unaccompanied minors will not be amended. He also writes that he will explore whether detention can be served in other facilities rather than a youth detention centre.⁶⁸ In the draft bill 'return and immigration detention act' the State Secretary recants this. He states that: "The government believes that the youth detention centre of the Justice Department best meets the needs and interests of both the unaccompanied migrant minors and the government".⁶⁹





Drawing of a five year old Afghan girl about her life in detention. She drew a tall bunk bed, and on the top side of the drawing we see a long row of eight doors.

6. Alternatives to immigration detention

6.1 Experimental alternatives

In 2010, The Dutch House of Representatives invoked the government to make better use of the available alternatives to immigration detention. In 2011, four experimental projects⁷⁰ were initiated as an alternative to immigration detention.⁷¹ The experimental projects which will be incorporated in the available supervisory measures are: the introduction of a compulsory notification system in combination with close supervision by the Repatriation and Departure Service, a bail system and the cooperation with NGO's.⁷² These initiatives however, have not yet been adopted as alternatives to border detention.⁷³

6.2 Minimum criteria for alternative procedures

The No Child in Detention Coalition has developed a set of minimum criteria which should be observed when developing alternatives to immigration detention.⁷⁴

- **Do not separate children from their parents**
The respect for family life above all needs to be considered when choosing alternatives to immigration detention.
- **Children must be able to receive education and have the freedom to develop**
The CRC and ECHR prohibit that the asylum status of a child damages their right to education and warrants their opportunity to develop unhindered.⁷⁵ Full access to educational facilities ought to be fundamental when choosing alternatives to immigration detention.
- **Children should receive the best possible care**
The CRC prohibits the discrimination against children on medical grounds.⁷⁶ This means that for this vulnerable group of children without a legal residence status, medical and psychological care ought to be available.
- **The right to be a child**
The CRC instructs that all children should be able to play⁷⁷, relax and recreate. This requires not only a child-friendly environment, but also liberty, toys and the possibility to relax.



6.3 Examples from outside the Netherlands

Grant Mitchell, director of the International Detention Coalition (IDC) stated during a convention on immigration detention in June, 2013 that the current policy on immigration detention in the Netherlands is ten years behind.⁷⁸ Based on a two year study in Australia, the IDC developed a model that can be utilised when researching alternatives to immigration detention. Based on an individual screenings and a community based approach, detention should be a measure of last resort.⁷⁹

In addition, Amnesty International put forward several alternatives to immigration detention in their report 'Immigration Detention in the Netherlands: it could and should be different'.⁸⁰

The following paragraphs will discuss several examples from other countries which will show that the current Dutch immigration detention policy can and must be changed.

Belgium

In 2009, Belgium stopped placing children in closed detention centres. The practice of placing families with a rejected asylum application in so-called 'return migration homes', is still being encouraged. Twenty-three residential units have already been constructed, and in 2014, the current locations will be expanded with five more units each. The staff available on these locations has also more than doubled from four to nine coaches in 2013. The number of families that travel to Belgium by plane and apply for asylum has decreased since 2011.

Australia

In 2005, a large scale investigation into the way in which the Australian Department of Immigration and Multicultural Affairs carried out their duties was conducted, after two individuals ended up in immigration detention while lawfully residing in Australia. One of the results was the radical improvement of the national case management system. The policy changed from enforcement and sanctions for unlawful residents to a system that was more focussed on the individual and considered alternatives to detention. In each case, an individual evaluation and risk assessment takes place. Subsequently, a personalized plan of action is developed. People who either reach the airport by plane or people who reside in Australia illegally because their visa expired, can, after a risk

assessment, receive a removal pending visa. People whose extradition after a period of detention appears difficult or impossible can also be taken into consideration for a removal pending visa. In addition, Australia maintains several other programs suitable for vulnerable persons.

In his letter of the 13th of September, 2013, the Dutch State Secretary of Security and Justice declares that he will explore the benefits and disadvantages of outsourcing case management to NGOs.⁸¹

Norway

In Norway, asylum seekers are never placed in border detention, but they are taken to shelters spread throughout the country.

Sweden

Border detention is not being enforced in Sweden. It is their belief that migrants should not be deprived of their freedom anymore than is strictly necessary. Immigration detention does occur, but generally when dealing with families, only the father is detained. Unaccompanied minors can only be detained in exceptional situations.⁸² The period of detention of families with children is a few days at the most.

In May 2011, the capacity of Sweden's immigration detention facilities was 245 (for comparison: the Netherlands: 2.282 places).⁸³ Barbed wire and bars are forbidden in Swedish detention centres. In addition, migrants are never locked in their cells, they can usually lock their own doors, only the front door is locked, the staff do not wear uniforms, the courtyard and recreation room are accessible all day and a gym is available.⁸⁴

In Sweden too, case management is a priority. Every family has their personal case worker that guides them through every step of the asylum application process.

Luxemburg

In Luxemburg, unaccompanied migrant minors and families with children are never placed in immigration detention. Exceptional safety risks are the only thing that can constitute an exception to this policy. Sometimes it occurs that single parents with children are placed in a closed transit centre 72 hours prior to their extradition.





This drawing of a nine year old Afghan girl shows her room in detention. On the left is a large door with a lock. Next to the door are the showers and the toilet. On the bottom we can see a small table. The girl herself is in the middle of the drawing and at the top we see her bed with striped sheets.

7. Conclusion and several myths disproved

The No Child in Detention Coalition hopes that the interviews with the children and their parents speak for themselves: Immigration detention is harmful, often traumatising and detrimental to the development of children. Given their particular vulnerability, the consequences of immigration detention and the availability of alternatives, the detention of children should be an ultimum remedium. Consequently, children in detention are not commensurate with the CRC. Immigration detention is detrimental to children, unnecessary and in conflict with human rights. There are several myths in circulation regarding the necessity of immigration detention. For instance, the myth that immigration detention is necessary for deterrent purposes and that border detention is necessary to meet the border protection obligation. In this concluding chapter, the Coalition will disprove several of these myths.

Border detention: detrimental to children and unnecessary on legal and political grounds.

It is incomprehensible why families who flee from perilous circumstances are being placed in border detention on arrival at Schiphol airport. Parents are unaware of the rules and customs of the Netherlands and do not know that the police is not a threat here. They are therefore virtually unable to comfort their children. The Secretary of State put forward that border detention is necessary to protect our borders. This argument however, is not tenable, neither in practical nor legal terms. The families in border detention practically always move up to regular asylum seekers' centres. The Secretary of State often used argument that border detention is necessary to meet Schengen obligations is invalid. Asylum seekers have a right reside enter the Netherlands and cannot be rejected at the border.

The argument that the abolishment of border detention would result in a 'monumental increase' in asylum seekers is not substantiated and is not consistent with previous experiences in Belgium, where border detention was abolished in 2009.⁸⁵ Border detention for unaccompanied minors in the Netherlands was abolished in 2011 and did not result in an increase

of asylum applications. Many children attend their parent's asylum interviews with the IND. This is undesirable and can be detrimental to both a child's development and the relationship with his or her parents.

Hitherto, the ABRvS believes that parents are able to sufficiently protect their children when in border detention. In addition, The Amsterdam Court ⁸⁶ recently ordained that the circumstances in detention centres are not so grave and that a maximum detention period of two weeks is in principle not unfit for children. In this decision, the Court of Justice exclusively took physical matters such as the number of available toys and windows into consideration. The No Child in Detention Coalition points out that the harm is in the experience and the fear that border detention invokes. This has not in any way been considered in the aforementioned ordination. Through this publication, the No Child in Detention Coalition hopes to add this assertion to the debate. In addition, the border detention period can be extended when the asylum procedure is to be awaited in detention.

Immigration detention: turn resolutions into a legal ban

The State Secretary announced his intention to stop immigration detention for families with children as a rule. However, this resolution has not yet been implemented into current policy. This is surprising, since the draft bill 'return and immigration detention act' is currently up for consultation. The No Child in Detention Coalition believes that this is an opportunity to legally ban immigration detention for minors. We can learn two important things from the interviews with children and their parents who have been in immigration detention. Firstly, people have unnecessarily been placed in immigration detention in the past, and the fact that these families still reside in the Netherlands demonstrates that extradition has not taken place. Secondly, the interviews illustrate the damage these children have suffered in immigration detention.

Examples from outside the Netherlands prove that it can be different. Personal return counselling ensures that people can leave the Netherlands in a dignified way.

Never separate a family

In both debates regarding immigration and border detention, it has been suggested that in the case of a two-parent family, only one parent should

be placed in detention. The No Child in Detention Coalition disagrees. First, a child has the right to stay with both his or her parents. In addition, this is too great an emotional sacrifice. Both families who have escaped peril in their own country and apply for asylum at Schiphol and families awaiting their extradition are in a crisis situation. That is exactly when parents and their children need each other the most. In situations when children feel particularly anxious, insecure and are separated from one of their parents, the risk of developing psychological issues (attachment disorder) is greatest.

No unaccompanied minors in immigration detention

Children who flee to another country and apply for asylum are even more vulnerable than children who do this together with their parents. This special vulnerability is widely acknowledged in the current immigration policies. However, immigration detention for unaccompanied minors has not yet been abolished and every year, unaccompanied minors end up in youth detention centres of the Justice Department, on grounds of their residence status. For these children, the No Child in Detention Coalition advocates a similar treatment to children who came with their families. The Coalition recommends that a legal ban on immigration detention for unaccompanied migrant minors is implemented in the upcoming 'return and immigration detention act'.

In short: children do not belong in immigration detention.

Notes

1. Defence for Children/UNICEF Nederland, 'Jaarbericht Kinderrechten 2013', July 2013, available through: <http://www.defenceforchildren.nl/images/20/2260.pdf>
2. Dienst Justitiële Inrichtingen, 'Vreemdelingenbewaring in getal 2008-2012', May 2013, available through: <http://www.dji.nl/Organisatie/Feiten-en-cijfers>, paragraph 4.6.
3. Amnesty International, Vreemdelingendetentie in Nederland: mensenrechten als maatstaf, September 2013, p. 12.
4. The No Child in Detention Coalition was formerly called 'Children do not belong in immigration detention' and consists of: Amnesty International, Defence for Children, Kerk in Actie, Stichting INLIA, Stichting Kinderpostzegels Nederland, Stichting Landelijk Ongedocumenteerden Steunpunt (LOS), UNICEF Netherlands, the Dutch Council of Refugees. In 2006, the Coalition collected over 100.000 signatures for a petition regarding the abolishment of placing children in immigration detention on grounds of migration policy. See www.geenkindindecnel.nl
5. In this publication, the term immigration detention may be used to refer to both border detention and immigration detention.
6. See: www.geenkindindecnel.nl
7. Dutch House of Representatives member Maij (PvdA) in the general consultation of 3 October, 2013: "Still, we would prefer to see that children will not be placed in detention at all, not if they are unaccompanied and not when they apply for asylum with their parents at Schiphol." *Kamerstukken II*, 2012/13, 19637, No. 1747, p. 16.
8. A5/3.2 Vc 2013, formerly A6/2.7 Vc 2000.
9. General consultation report of 3 October, 2013. *Kamerstukken II* 2013/14, 19 637, No. 1747, p. 35.
10. The draft bill does state a proposal to amend article 59 clause 5 of the Aliens act. This clause in the draft states : 'Further rules on the criteria for and application of detention for vulnerable persons will be determined by the general administrative council'. Internet consultation version published on December 21st, 2013, p. 20. <https://www.internetconsultatie.nl/vreemdelingenbewaring>.
11. *Kamerstukken II*, 2012/13, 19637, No. 1721.
12. *Kamerstukken II*, 2012/13, 19637, No. 1721, p. 16.
13. See also: Amnesty International, *Vreemdelingendetentie in Nederland: mensenrechten als maatstaf*, September 2013, p. 12.
14. *Kamerstukken II*, 2012/13, 19637, No. 1721, p. 16.
15. Steel, Z. e.a. 'Impact of immigration detention and tempory protection on the mental health of refugees'. In: *British Journal of Psychiatry*, 2006, Vol. 1, p. 58-64. Discussed in: C. van Os & D. Beltman (2012). 'Kinderrechten in het migratierecht'. In: M. Blaak e.a. (2012). *Handboek Internationaal Jeugdrecht*, Leiden: Defence for Children, p. 809.

16. M. Blaak, M. Bruning, M. Eijgenraam, M. Kaandorp en S. Meuwese (ed.), *Handboek Internationaal Jeugdrecht. Een toelichting voor rechtspraak en jeugdbeleid op het Verdrag inzake de Rechten van het Kind en andere internationale regelgeving over de rechtspositie van minderjarigen*, Leiden: Defence for Children 2012, p. 146.
17. Ibidem, p. 38-39.
18. Pinheiro, P. S. (Independent Expert) (2006), United Nations Secretary-General's Study on Violence against Children, *World report on violence against children*, Genève: ATAR Roto Presse SA, p. 189.
19. See for instance: ABRvS 7 Februari 2012, r.o. 2.3.8, JV 2012/152 en ABRvS 16 April 2013, JV 2013/329, m. nt. Beltman.
20. A.M. Reneman, 'Het Kinderrechtenverdrag krijgt tanden. Over hoe het VN verdrag inzake de rechten van het kind via het EU-recht en het EVRM binnendringt in het Nederlands vreemdelingenrecht', *Asiel & Migrantenrecht*, 2011-08, p. 349-362.
21. ABRvS 13 May 2013, LJN CA0598.
22. The ABRvS also ordains: 'Furthermore, the policy that the Minister applies, with regard to the detention of families with underage children, suggests detention of underage children should be avoided as much as possible. From the records pertaining to the case, it does not show that the Minister assessed whether any facts or circumstances give rise to ensure less onerous means of transfer, prior to the detention of migrants [...].
23. ECHR 19 January 2013, Muskhadzhieva e.a. versus Belgium, nr 41442/07, JV 2010/119 m. nt. Cornelisse.
24. Article 37 of the CRC: States Parties shall ensure: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time [...]
25. C. van Os & D. Beltman (2012). 'Kinderrechten in het migratierecht'. In: M. Blaak e.a. (2012). *Handboek Internationaal Jeugdrecht*, Leiden: Defence for Children, p. 808.
26. <http://www.geenkindindecel.nl/?ac=Achtergrond>
27. A5/3.2 Vc 2013, formerly A6/2.7 Vc 2000.
28. General consultation report of 3 October 2013. *Kamerstukken II* 2013-14, 19 637, No. 1747, p. 35.
29. Letter of the State Secretary of Security and Justice to the House of Representatives d.d. 13 September 2013. *Kamerstukken II* 2012/13, 19 637, No. 1721, p. 24.

30. For further explanation, see: Amnesty International (2010): *Vreemdelingendetentie: in strijd met mensenrechten, Update van het rapport: The Netherlands: The detention of irregular migrants and asylum-seekers.*
31. HvJ 30 May 2013, Arslan, No. C-534/11, *JV* 2013/248, m. nt. Conelisse.
32. ABRvS 11 June 2013, *JV* 2013/327, m. nt. Conelisse.
33. G. Cornelisse, 'Detentie van asielzoekers op Schiphol in EU-rechtelijk perspectief', *A&MR* 2013, No. 9, p. 440 – 446.
34. Rb. Den Haag, z.p. Amsterdam 13 October 2010, *ECLI:NL:RBSGR:2010:BO1314*, *JV* 2010/483 m. nt. Conelisse.
35. ABRvS 12 July 2011, *LJN* BR 2118, *JV* 2011/375, defeats Rb. Den Haag, z.p. Haarlem 1 April 2011, *LJN* BQ0203 en ABRvS23 May 2011, *LJN* BQ6483, *JV* 2011/310, defeats Rb Den Haag, z.p. Amsterdam 18 November 2010, *LJN* BO7499, *JV* 2011/57. The magistrates of the court of justice have ruled that the border detention for unaccompanied minors at Schiphol AC is in conflict with article 5 of the ECHR. In those appeals, article 22 (special protection for refugee children) and article 37 of the CRC were (ultimum remedium principle) were employed.
36. Rb. Den Haag, zp. Amsterdam 11 December 2013, *ECLI:NL:RBDHA:2013:16837*, r.o. 8.1 en 8.2.
37. Ibidem, r.o. 9.2
38. General consultation report dd 3 October 2013. *Kamerstukken II* 2013-14, 19 637, No. 1747, p.38.
39. Figures from the Belgian Immigration Office:
<https://dofi.ibz.be/sites/dvzoe/NL/Documents/2011NL.pdf> (pag. 133).
https://dofi.ibz.be/sites/dvzoe/NL/Documents/2012_NL.pdf (pag. 150).
40. The European Committee of Social Rights found that the reception policy for asylum seeking children in Belgium, are in conflict with the right to protection and housing under the European Social Charter. ECSR 23 October 2013. *Defence for Children Belgium versus Belgium*, No. 69/2011.
41. Figures from the website of the Central Agency for the Reception of Asylum Seekers: www.coa.nl.
42. UNHCR en VluchtelingenWerk Nederland, 'Pas nu weet ik: vrijheid is het hoogste goed', *Gesloten Verlengde Asielprocedure 2010-2012*, p. 7.
43. ABRvS 18 May 2012, No. 201003207/1/V3, *JV* 2010/256.
44. See note: Cornelisse at ECHR 24 October 2013, *Hossein versus Greece*, No. 71825/11, *JV* 2013/398.
45. The children do not go to school (in conflict with article 28 of the CRC), there is no recreation (in Schiphol AC there is a recreation room but there is just one Playstation, which is not in line with the right to recreation from article 31 of the CRC) , they cannot go to the library and permission must be sought from the guards

to enter the courtyard. There are toys for younger children but there is insufficient recreation for the older children. Children can visit an outdoor area under supervision, but they do not experience this as pleasant. There are no other children to play with and they feel like a 'fish in a bowl' because the area can be watched from the cells. Some children also are not dressed for the cold in the Netherlands.

46. *Kamerstukken II*, 2012/13, 19637, No. 1721, p. 16.
47. *Kamerstukken II* 2007/08, 19 637, No. 66, Vc 2013 - A5/2.4.
48. Draft bill 'return and immigration detention act, internet consultation version published on 21 December 2013, p. 20. <https://www.internetconsultatie.nl/vreemdelingenbewaring>. The announced policy changes will likely be modeled on the new Article 59 paragraph 5 of the Aliens Act which states that more detailed rules are laid down by order in council on the criteria and application of detention in vulnerable individuals. It is striking that in the Explanatory Memorandum to the Bill, nothing is said about this in Article 59 of the Alien act.
49. WBV 2013/27, published in the *Staatscourant* of 30 December 2013, No. 35897.
50. Council of Europe, 'Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT)', para. 61. August 2012, available through: <http://www.cpt.coe.int/documents/nld/2012-21-inf-eng.pdf>.
51. In the bill 'act return and detention' that was prepared for consultation on 21 December 2013 prepared for consultation, it is proposed to switch to a uniform regulatory rule. Explanatory Memorandum, p.4. <https://www.internetconsultatie.nl/vreemdelingenbewaring>.
52. *Kamerstukken II*, 2012/13, 19637, No. 1721, p. 16.
53. The bill 'return and migrants', states that under the 'residence regime' migrants have a right to at least twelve hours outside their cells Article 21, paragraph 2. <https://www.internetconsultatie.nl/vreemdelingenbewaring>. The door would be locked at 22:00. Explanatory Memorandum, p. 9.
54. ABRvS 23 May 2012, *ECLI:NL:RVS:2012:BW7074*, r.o. 2.2.4 and 2.2.5.
55. Article 3 of the ECHR: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
56. Article 5, paragraph 1 of the ECHR: Everyone has the right to liberty and security of person. No one shall be deprived of his freedom, except in the following cases and in accordance with a procedure prescribed by law [...]
57. Article 8, paragraph 1 of the ECHR: Everyone has the right to respect for his private and family life, his home and his correspondence.
58. ECHR 19 January 2012, *Popov versus France*, nrs 39472/07 en 39474/07, JV 212/167, m.nt Battjes.

59. Den Haag Court of Justice 27 July 2010, *ECLI:NL:GHSGR:2010:BN2164*, *JV* 2010/328.
60. Article 20 of the CRC paragraph 1: A child that must miss, temporarily or permanently, living in the family to which he belongs, or that one cannot allow the child to remain in his family in his own interest, is entitled to special protection and assistance provided by the State. paragraph 2: 2. States parties shall ensure, in accordance with their national laws, alternative care for the child.
61. *Kamerstukken II*, 2011-11, 27 062, No. 68.
62. Dienst Justitiële Inrichtingen, 'Vreemdelingenbewaring in getal 2008-2012', May 2013, available through: <http://www.dji.nl/Organisatie/Feiten-en-cijfers/>, table 4.5.
63. Defence for Children en UNICEF Nederland, *Jaarbericht Kinderrechten 2013*. In this publication, 70 unaccompanied minors who have stayed in detention are included. This number is derived from figures provided by the Ministry of Justice on the basis of a freedom of information request. The Annual Child's Rights Report 2013 is available through: www.defenceforchildren.nl or www.unicef.nl.
64. Draft Explanatory Memorandum notes 'return and immigration detention act', internet consultation version published on December 21, 2013, p. 21. <https://www.internetconsultatie.nl/vreemdelingenbewaring>
65. Amnesty International, *Vreemdelingendetentie in Nederland: mensenrechten als maatstaf*, September 2013, p. 12.
66. *Kamerstukken II* 2010/11, 27062, No. 68. Paragraph A5/2.4 of the migrant circular regarding the policy concerning detention of unaccompanied migrant minors states that: "Even more than in adults, detention for unaccompanied migrant minors is only applied in extreme cases and for the shortest possible duration. Detention for unaccompanied migrant minors is justified only when a conflict of important interests occurs. These interests occur exclusively in the following situations: The unaccompanied minor is charged with or convicted of a crime; The departure of the unaccompanied minor can be realized within a fortnight at the latest; The unaccompanied minor has previously departed with an unknown destination from the shelter or has not complied with the obligated notification requirement or the freedom restriction measure; The unaccompanied minor has been refused entry to the Netherlands. If there are doubts concerning the minority of the migrant, their freedom is restricted until their minority has been confirmed by the INS.
67. If one of the contraindications occurs, the maximum period of fourteen days does not apply. See, for example. ABRvS June 27, 2013, No. 201303374/1/V3, *JV* 2013/308.
68. *Kamerstukken II*, 2012/13, 19637, No. 1721, p. 16.
69. Return and immigration detention act, internet consultation version published on 21 December 2013, p. 22. <https://www.internetconsultatie.nl/vreemdelingenbewaring>
70. 1. Imposing a notification obligation to the Aliens Police in combination with facilitation of return by the Repatriation and Departure Service (DT & V) to migrants who are forced to return, who receive care/shelter from reliable private persons or organisations. 2. Imposing a freedom restricting measure in a liberty restricting

location for former unaccompanied minors who were in treatment at the time of the termination of the Perspective Project. The Perspective Project supported unaccompanied minor asylum seekers in obtaining a residence permit or a return to the country of origin, in order to prevent them ending up in crime in the Netherlands. 3. Exploring a bail, payable in advance by the migrant who is being extradited, which is returned when the it is provable that the migrant has left the territory of the European Union. 4. The co-financing of return projects of non-governmental organizations and foundations, which are supported by local communities and/or religious institutions.

71. *Kamerstukken II* 2011/12, 19637 No. 1483.
72. *Kamerstukken II*, 2012/13, 19637, No. 1721., p. 10.
73. *Kamerstukken II*, 2012/13, No. 1126. Answer of State Secretary Teeven (Security and Justice) (received February 21, 2013). See also Appendix Acts, session 2012/13, No. 1126.
74. Article 9 of the CRC and article 8 of the ECHR.
75. Article 2 jo article 28 jo article 6, paragraph 2 CRC and verdict ECHR 13 December 2005 (55762/00 inz. Protocol 1, article 2 ECHR).
76. Article 2 jo article 24 of the CRC
77. Article 2 jo article 31 of the CRC
78. Symposium immigration detention anno 2013, Amnesty International, 17 June, 2013.
79. The IDC Handbook is available at: <http://idcoalition.org/cap/handbook/>.
80. See the report 'Vreemdelingendetentie in Nederland: het moet en het kan anders', alternatieven voor vreemdelingendetentie, October 2011.
81. *Kamerstukken II*, 2012/13, 19637, No. 1721, p. 11.
82. See: <http://www.globaldetentionproject.org/countries/europe/sweden/introduction.html>
83. In comparison, in Sweden, the number of asylum seekers in 2010 was 31.819, while in that same year, 13,300 people applied for asylum in the Netherlands.
84. Amnesty International, 'Vreemdelingendetentie in Nederland: Het moet en kan anders', October 2011, p. 32.
85. Figures from the Belgian Immigration Office:
<https://dofi.ibz.be/sites/dvzoe/NL/Documents/2011NL.pdf> (p. 133).
https://dofi.ibz.be/sites/dvzoe/NL/Documents/2012_NL.pdf (p. 150).
86. Rb. Den Haag, zp. Amsterdam 11 December 2013, *ECLI:NL:RBDHA:2013:16837*.

Colophon

A Publication of the No Children in Jail coalition.

The No Children in Jail coalition consists of: Amnesty International, Defence for Children, Stichting INLIA, Kerk in Actie, Stichting Kinderpostzegels Nederland, Stichting LOS, UNICEF Netherlands and VluchtelingenWerk Netherlands.



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This publication is available for download at: www.geenkindindecel.nl
A Dutch version of this publication is also available.

This publication has been realised through the financial aid of:
Stichting Kinderpostzegels Netherlands

Finish



Surveillance



Countdown



Barbed wire



Fingerprint



Keys



Photo



Police



Handcuffs



Start



After we got out, me and my sister played 'prison' a lot.

We would lock each other up and say 'you can never ever come out'.

Twelve year old boy who was in immigration detention with his parents and
six year old sister for ten days, four years ago.
